

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-3, 5-6, and 14 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 1 recites "an inhibiting means for inhibiting automatic control of at least one of a luminosity and a chrominance of the camera", which is not a step in a method claim. It is unclear exactly what is being claimed by such recitation, rendering the claim indefinite.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1, 3, 9-10, and 14, are rejected under 35 U.S.C. 102(b) as being anticipated by Morris et al. (6,328,567).**

Regarding claims 1 and 9, Morris et al. disclose a method and device for enabling determination of a sample of a color coding ring palette 135 (Fig. 15) whose color is closest to a color of at least part of at least one element 134 of a patient's set of teeth, wherein with the aid

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of imaging means comprising a video camera said method comprises the steps of: inputting and freezing on a screen a color image 104 of this set-of-teeth element (Fig. 9; column 6 lines 55-67). The method and device further comprises the step and means for filming the color coding ring palette (i.e. the dental shade standard set 135 as shown in Fig. 15) and displaying on the screen the imaging of at least one sample (dental shade tab 109 shown in Fig. 9) so that this image 109 lies side by side joined without separation with the frozen image of the set-of-teeth element so as to allow the user to visually compare the frozen image of the set of teeth element with the image of the sample 109 (Figs. 9 and 15; column 7 lines 51-54; column 8 lines 57-60; column 9 lines 34-59; column 10 line 57- column 11 line 45).

The step of visually comparing the image of the set-of-teeth element frozen on the screen and the image of the sample 109 (Fig. 9) is inherently carried out. Specific to claim 9, note that any basic or more advanced video camera inherently has a "manual" function which inhibits automatic controlling of the luminosity and chrominance of the camera.

As to claims 3, 10, and 14, note that the image 134 of the set-of-teeth element is frozen on the screen and that such image 134 and the sample/dental shade tab 109 are acquired separately. The image 134 is acquired by a video camera (column 6 lines 55-67) while the sample dental shade tab 109 is acquired from palette 135 (column 10 lines 57-67).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6 **Claims 2 and 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris et al. (6,328,567).**

Morris et al. disclose the invention substantially as claimed. However, Morris et al. are silent to the samples of the color coding ring palette are made to advance on the screen (claim 2). Morris et al. are also silent to increasing the chrominance and luminosity of the video camera (claims 5-6).

As to claim 2, such claimed sample-advancing technique is well known. For example, Microsoft Word™ has a color chart for the users to select a color for the font, wherein each color in the color chart can be advanced to be previewed for selection. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Morris et al. by enabling the advancing of the samples of the color coding chart 135 (Fig. 15) so that each sample can be individually viewed and evaluated next to the patient's tooth. Furthermore, as to claims 5-6, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Morris et al. by increasing the chrominance and/or luminosity of the video camera. Such control or increase on the chrominance and/or luminosity of the video camera is merely a matter of choice well within the skill of an artisan obtained via routine experimentation in order to achieve an optimum match between the real object and the image of the object captured by the video camera.

Response to Arguments

7 Applicant's arguments filed 09/08/2009 have been considered but are not persuasive. Applicant argued that Morris does not disclose displaying the image of a sample from the palette and the frozen image of the set-of teeth element side by side joined to each other without separation. The examiner maintains that Morris' Figures 9 and 13 show the samples

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106, 108, or 109, of palette 135, each is displayed on the screen on top of the frozen image of set-of-teeth element 104, which is equivalent to or reads on "side by side joined to each other without separation" (Figs. 9 and 15; column 7 lines 51-54; column 8 lines 57-60; column 9 lines 34-59; column 10 line 57- column 11 line 45).

Conclusion

8 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9 Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAO D. MAI whose telephone number is (571)270-3002. The examiner can normally be reached on Monday-Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hao D Mai/
Examiner, Art Unit 3732

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